

## **REMARKS**

### **I. Claim Rejections – 35 USC § 112**

Claims 10-19 are rejected as failing to comply with the written description requirement. The contention is that the “self-discovery procedure” is inadequately described in the specification “so as to provide a point of distinction in the claims”. The rejection is without merit. First of all, Applicants have identified where in the specification there is support and a written description for the limitation at issue. This place is at page 4, lines 21-25. Second, there is no requirement in section 112, first paragraph, for the written description of the specification to “provide a point of distinction in the claims.” That requirement is nowhere to be found in the statute. The written description requirement merely serves to insure that the inventor had possession, as of the filing date, of the specific subject matter later claimed. How the specification accomplishes this is not material. No particular form of disclosure has to be used. The fact that the specification is very short is immaterial. See *In re Hayes Microcomputer Patent Litig.*, 982 F.2d 1527 (Fed. Cir. 1992).

The present specification clearly states that “With the self-discovery procedure, programming unit 102 determines whether to continue initializing in its current mode or to reconfigure itself into a different mode based on software applications residing on gateway server 106.” This fully meets the scope of the claim language. The belief that additional definition as to what modes there are and what is being done to actually accomplish the determination fails to properly consider the scope of the claim language. Moreover, the argument appears to be more in the nature of a contention that the specification is not enabling. Yet, clearly one skilled in the art could provide software for the programmer to determine whether to continue in an initializing mode or to reconfigure to a different mode as directed by software applications on the gateway server.

Applicants respectfully submit that, especially when read by one skilled in the art, the written description fully meets the requirements of the first paragraph of section 112, and therefore withdrawal of the rejection is respectfully requested.

## **II. Claim Rejections – 35 USC § 103**

Claims 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell (US 6,249,705) in view of Bowman-Amuah (US 6,332,163). Claims 10-19 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Ji et al. (US 5,623,600) in view of Snell (US 6,249,705).

Claim 10 recites that the programming unit is coupled to the gateway server arrangement and comprises means for performing a self-discovery procedure to determine whether to initialize in a current mode or to reconfigure into a different mode that is based on software applications residing on the gateway server arrangement. None of the referenced prior art documents, alone or in combination, teach or suggest a self-discovery procedure wherein the IMD programming unit determines whether to initialize in a current mode or to reconfigure into a different mode that is based on software applications residing on a gateway server arrangement. Therefore, independent claim 10 is distinguishable from the prior art documents. The rejection appears to be based on an attempt to leverage the rejection under section 112 so as to give no patentable significance to the limitation that the programming unit comprises "means for performing a self-discovery procedure to determine whether to initialize in a current mode or to reconfigure into a different mode that is based on software applications residing on the gateway server arrangement." See office action at page 4. This approach is improper. The obviousness of the claimed subject matter as a whole must be evaluated against the scope and content of the prior art. The issue of an adequate written description is a separate consideration and should not be imported into the analysis under section 103. To do so is clearly erroneous.

The primary reference in the first section 103 rejection is Snell. However, the server 102 in Snell operates with network programmers configured to perform only limited functions. The network server performs additional functions directed to analyzing information received from the network programmers and to transmitting the results of such analyses. Thus, network programmers necessarily operate in a single mode and do not include the ability to be reconfigured into a different mode based upon software applications residing on the network server. The subject matter of claim 10 is clearly not taught by Snell. All that Bowman-Amuah is relied upon to provide is antivirus software. That too misses the issue with regard to claim 10. The rejection clearly has no viability separate and apart from completely ignoring the self-discovery means of claim 10. Again, it is error to fail to give consideration to the scope of claim 10 as a whole, as required by section 103 of the statute.

The second 103 rejection based on Ji in view of Snell is also nothing more than the same argument that servers with antivirus protection are obvious. And, again, that argument fails to meet the substance of claim 10 as a whole, which requires that the programming unit comprise means for performing a self-discovery procedure to determine whether to initialize in a current mode or to reconfigure into a different mode that is based on software applications residing on a server coupled to the programming unit.

The examiner at page 5 of the office action advances the notion that Snell teaches or makes obvious a means for performing a self-discovery procedure to determine whether to initialize in a current mode or to reconfigure into a different mode that is based on software applications residing on the gateway server arrangement. Yet, nowhere is there an indication in support of that contention as to where it is that Snell provides such an indication or suggestion to one skilled in the art. Without such indication, Applicants respectfully submit that Snell does not include support for the limitation, and therefore does not teach or suggest the limitation. Accordingly, withdrawal of the rejections is respectfully requested.

For reasons stated above, the obviousness rejections are without merit and should be withdrawn.

### **III. Conclusion**

Applicants respectfully submit that all presently pending claims in this application are in condition for allowance. Applicants further respectfully request that a notice of allowance be issued in due course.

Respectfully submitted,

CHESTER G. NELSON ET AL.

May 3, 2006  
Date

/Michael C. Soldner/  
Michael C. Soldner  
Reg. No. 41,455  
(763) 514-4842  
Customer No. 27581